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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,296	07/10/2003	David Brault	84215-202 ADB	1602

23529 7590 01/14/2005

ADE & COMPANY
1700-360 MAIN STREET
WINNIPEG, MB R3C3Z3
CANADA

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,296

Applicant(s) ³⁻

BRAULT ET AL.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Invention I (claims 1-11) in the reply received on 15 November 2004 is acknowledged. The traversal is on the ground(s) that the different uses for the subcombinations are completely unreasonable (Remarks page 8 3rd para). This is not found persuasive because under MPEP 806.05(d) the subcombinations must be disclosed as usable together and yet have separate usability. The examiner must supply an example of use which is not unreasonable. Here, the subcombinations are shown as usable together in the drawings and the Examiner considers the different uses as reasonable. The uses take into account the structure of the invention and each subcombinations particular limitations.

The requirement is still deemed proper and is therefore made FINAL. Due to the amendment received 15 November 2004 along with the response to the restriction requirement. All claims are rejoined.

Claim Objections

grl
Claims 7, 8, 9, ~~is~~ objected to because of the following informalities:

In claim 7, line 1, "the posts" should be --plurality of vertical posts-- to conform with the language of claim 1, lines 10-11.

In claim 8, line 2, after "each" should be inserted --one-- for improved clarity.

In claim 9, line 3, after "each" should be inserted --one-- for improved clarity.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-26 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 13, the term “one side wall” is indefinite because the term lacks antecedent basis. Perhaps, the term should be --one of the sidewalls” to conform with the language of line 10.

In claim 1, line 14, the term “one side wall” is indefinite because the term lacks conformity, and therefore is ambiguous, with the language of line 10. Perhaps, the term should be --one of the sidewalls.”

In claim 1, line 15, the term “the opposite side wall” is indefinite because the term lacks antecedent basis.

In claim 1, line 16, the term “one of the spans” is indefinite because the term lacks conformity, and therefore is ambiguous, with the language of line 12.

In claim 4, line 1, “the side walls” is indefinite because this limitation lacks antecedent basis. In addition, this limitation is ambiguous when compared to the terminology of claim 1.

In claim 5, line 3, “said opposite wall” lacks antecedent basis.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-7, 10, 11, are rejected under 35 U.S.C. §103(a) as being unpatentable over Takano (JP2000-69858) in view of Wi (US 5,438,794).

As to claim 1, Takano discloses a greenhouse comprising (Figs. 1 and 2) an exterior wall structure (shown in Figs. 1 and 2); a plurality of elongate benches (Figs. 1 and 2) located in the interior and provided to support crop material; an air handling system including at least one air moving fan (6 of Fig. 1), at least one interior air intake (13 of Fig. 2), at least one interior air outlet (another of the 8A of Fig. 2), at least one exterior vent (12 of Fig. 1), and at least one component to change the air temperature 14 of Figs. 1 and 2); the benches arranged in a spaced position along one of the sidewalls (Fig. 2) with one end adjacent to a sidewall (Figs. 1 and 2) and extending at a right angle to an opposite sidewall (Fig. 2). Not disclosed is the exterior wall structure with transparent panels and defined by a plurality of vertical posts, each bench associated with a span between posts. Wi, however, discloses a greenhouse with the exterior wall structure with transparent panels (shown in Fig. 1 for the far sidewall) and defined by a plurality of vertical posts (shown in Fig. 1 for the far sidewall), each bench associated with a span between posts (in that in Fig. 1 there are ten "benches" (i.e., growing regions) and 10 spans, excluding the two de minimis, triangular spans at the bottom corners). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the greenhouse of

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Takano by having the wall structure and bench spacing as disclosed by Wi so as to meet the needs of the grower.

As to claim 2, Takano as modified by Wi further disclose the benches' width substantially the width of the wall span (see Fig. 1 of Wi).

As to claim 4, Takano as modified by Wi further disclose the sidewalls of right angle to the sidewalls (that are similar to endwalls) have the same span between posts (see Fig. 1 of Wi) and the length of the benches is the length of the spans (Fig. 1 of Wi).

As to claim 5, Takano as modified by Wi further disclose the benches located such that one end at one sidewall has an opposed end spaced from the opposite wall (Fig. 2 of Takano).

As to claim 6, the limitations of Claim 1 are disclosed as described above. Not disclosed is the span being six feet. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the span six feet so as to meet the needs of the grower.

As to claim 7, Takano as modified by Wi further disclose the panels attached at their edges to the posts and spanning the distance between posts (Fig. 1 of Wi).

As to claim 10, the limitations of Claim 1 are disclosed as described above. Takano as modified by Wi further disclose a alley way outside of a wall and parallel the wall (see Fig. 2 of Takano). Not disclosed is the alley way formed outside the opposite wall. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the alley way formed outside the opposite wall so as to meet the needs of the grower.

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As to claim 11, the limitations of Claim 1 are disclosed as described above. Takano as modified by Wi further discloses a doorway with a door panel (see Fig. 2 of Takano). Not disclosed is the doorway the width of one span and mounted between posts. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the doorway the width of one span and mounted between posts so as to strengthen the structure and to meet the needs of the grower.

Claims 12-¹⁷~~16~~ are rejected under 35 U.S.C. §103(a) as being unpatentable over Takano (JP2000-69858) in view of Wi (US 5,438,794) in further view of Freman, Sr. (US 4,146,993).

As to claim 12, the limitations of Claim 1 are disclosed as described above. Not disclosed is an electrical system for controlling the air handling including at least one cabinet, the cabinet the width of one span. Freeman, Sr., however, discloses a cabinet (22 of Fig. 1) used to control the electrical system of greenhouse that is equal to the span (Fig. 2) and a integral panel (in that cabinet is integrated with the wall). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi by having the cabinet used to control the electrical system of greenhouse, in the instant application the air system, that is equal to a span as disclosed by Freeman Sr. so as to strengthen the structure and to meet the needs of the grower.

As to claim 13, the limitations of Claim 12 are disclosed as described above. Not disclosed is a plurality of electrical cabinets, each the width of one span. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi and Freeman Sr. by having a plurality of cabinets used

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to control the electrical system of the greenhouse so as to strengthen the structure and to meet the needs of the grower.

As to claim 14, the limitations of Claim 12 are disclosed as described above. Takano as modified by Wi further disclose a alley way outside of a wall and parallel the wall (see Fig. 2 of Takano). Not disclosed is the alley having the width of one span and the integral panel spanning two posts. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi and Freeman Sr. by having the alley having the width of one span and the integral panel spanning two posts so as to strengthen the structure and to meet the needs of the grower.

As to claims 15 and 16, the limitations of Claim 12 are disclosed as described above. Not disclosed is the integral panel defined by the cabinet and wall panel portions along at least one side and the integral panel fastened to two posts. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi and Freeman Sr. by having the integral panel defined by the cabinet and wall panel portions along at least one side and the integral panel fastened to two posts so as to strengthen the structure and to meet the needs of the grower.

As to Claim 17, the limitations of Claim 12 are disclosed as described above. Not disclosed is a doorway with a width equal to one span, mounted between two posts, into the interior. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the greenhouse of Takano as modified by Wi and Freeman Sr. by having the doorway with a width equal to one span, mounted between two posts, into the interior so as to strengthen the structure and to meet the needs of the grower.

Allowable Subject Matter

Claims 3, 8, 9, and 19-26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Starting a Greenhouse Business, Starting in the Greenhouse Business, Florida Greenhouse Design, Planning and Building a Greenhouse, and A Good Look at Greenhouses disclose in the prior art various greenhouses.

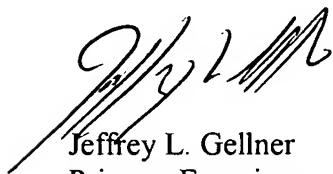
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner
Primary Examiner